

SCHEDULE 1

Regulation 10

ASSESSMENT OF DISPOSABLE INCOME FOR THE PURPOSES OF CHILDREN'S LEGAL AID

1.—(1) The income of the person concerned from any source is taken to be the income which that person may reasonably expect to receive (in cash or in kind) during the period of computation.

(2) In this paragraph “period of computation” means the period of one calendar month immediately preceding the date of application for children’s legal aid, or such other period as in the particular circumstances of any case the Board may consider to be appropriate.

2. The income in respect of any emolument, benefit or privilege receivable otherwise than in cash is to be estimated at such a sum as in all the circumstances is just and equitable.

3.—(1) The income from a trade, business or gainful occupation other than an employment at a wage or salary is deemed to be whichever of the following the Board considers more appropriate and practicable—

- (a) the profits which have accrued or will accrue to the person concerned in respect of the period of computation; or
- (b) the drawings of the person concerned.

(2) In calculating the profits and drawings referred to in paragraph (1)—

- (a) the Board may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been prepared; and
- (b) there is to be deducted all sums necessarily expended to earn those profits, but no deduction is to be made in respect of the living expenses of the person concerned or any member of that person’s family or household, except in so far as that person is wholly or mainly employed in that trade or business and such living expenses form part of that person’s remuneration.

4. In computing the income of the person concerned there is to be left out of account—

- (a) any income tax paid or payable on income treated under the provisions of this Schedule as the person’s income;
- (b) the amount estimated to have been paid by way of contributions under the 1992 Act or any scheme made under that Act in the calendar month immediately preceding the date of application for children’s legal aid;
- (c) when it would be reasonable to do so, an amount to provide for the care of any dependent child living with the person concerned during the time that person is absent from the home by reason of employment; and
- (d) the amount of any contribution paid, whether under a legal obligation or not, to an occupational pension scheme within the meaning of the Social Security Pensions Act 1975⁽¹⁾ or to a personal pension scheme within the meaning of section 1 of the Pension Schemes Act 1993⁽²⁾.

5. In computing the disposable income of the person concerned, there is to be disregarded any payments made in accordance with—

- (a) income support;
- (b) income-based jobseeker’s allowance;

(1) 1975 c.60.
(2) 1993 c.48.

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- (c) disability living allowance;
- (d) income-related employment and support allowance;
- (e) universal credit;
- (f) personal independence payment;
- (g) armed forces independence payment.

6. In computing the disposable income of the person concerned, there is to be disregarded a payment by a local authority in exercise of the power in section 20 of the Local Government in Scotland Act 2003(3) (power to advance well-being) and using funds provided by Scottish Ministers from the Scottish Welfare Fund where the payment is—

- (a) a crisis payment made for the purpose of meeting an immediate short term need; or
- (b) made for the purpose of meeting a need for community care.

7. There is to be a deduction in respect of the amounts payable or estimated to be payable in the calendar month immediately following the application by the person concerned in respect of—

- (a) the council tax and the rate as defined in section 99(1) and (2)(a) of the Local Government Finance Act 1992(4); and
- (b) charges payable under an order made by virtue of section 37 of the Water Industry (Scotland) Act 2002(5).

8.—(1) Subject to sub-paragraph (2), there is to be a deduction, in respect of rent of the main or only dwelling in the case of a householder, of the amount of the net rent paid or such part of the net rent paid as is reasonable in the circumstances.

(2) Any contributions received from any other person towards that payment of rent is taken into account as income, and the Board is to decide which is the main dwelling, where the person concerned resides in more than one dwelling in which that person has an interest.

(3) In this paragraph the expression “rent” means—

- (a) the feu duty or ground annual or the rent payable in respect of a calendar month; and
- (b) a sum in respect of the outgoings borne by the householder for the calendar month immediately preceding the making of the application for children’s legal aid including, in particular, a reasonable allowance towards any necessary expenditure on repairs and insurance and any other annual burden, including any instalment (whether of interest or capital) payable in respect of a heritable security (within the meaning of section 9(8)(a) of the Conveyancing and Feudal Reform (Scotland) Act 1970(6) or a real burden relating to the performance of an act.

(4) In this paragraph the expression “net rent” means—

- (a) the rent less any proceeds of subletting any part of the premises in respect of which the rent is paid or the outgoings incurred; or
- (b) where any person or persons other than the person concerned, any spouse of that person or persons, or any dependent of that person or persons is accommodated, otherwise than as a subtenant, in the premises for which the rent is paid, the rent less such an amount as the Board may determine to be reasonably attributable to the accommodation of such person.

9. If the person concerned is not a householder, there is to be a deduction in respect of the cost of that person’s living accommodation of such amount as is reasonable in the circumstances.

(3) 2003 asp 1.
(4) 1992 c.14.
(5) 2002 asp 3.
(6) 1970 c.35.

10.—(1) There is to be a deduction in respect of the maintenance of the spouse of the person concerned, if the spouses are living together and in respect of the maintenance of any person wholly or substantially maintained by the person concerned, being a member of his or her household, (“a dependent person”) at the following rates—

- (a) in the case of a spouse, at a rate equivalent to the difference, as at the date when the computation period began, between the income support allowance for a couple where both members are aged not less than 18 (which is specified in column (2) of paragraph 1(3)(d) of Part 1 of Schedule 2 to the Income Support (General) Regulations 1987(7), and the allowance for a single person aged not less than 25 (which is specified in column (2) of paragraph 1(1)(e) of Part 1 of Schedule 2 to those Regulations);
- (b) in the case of a dependent person aged under 19, at a rate equivalent to the amount specified in column (2) of paragraph 2(1) of Part 1 of Schedule 2 to the Income Support (General) Regulations 1987 appropriate to that person as at the date when the computation period began;
- (c) in the case of a dependent person aged 19 or over, at a rate equivalent to the amount specified in column (2) of paragraph 2(1) of Part 1 of Schedule 2 to the Income Support (General) Regulations 1987 as at the date when the computation period began: Provided that the Board may reduce such rate by taking into account the income and other resources of the dependent person to such extent as appears to the Board to be just and equitable.

(2) In ascertaining whether a person is a dependent person regard is to be had to their income and other resources.

11. If the person concerned is making and, throughout such period as the Board may consider adequate, has regularly made payments in good faith for the maintenance of a spouse who is living apart, of a former spouse, of a child or of a relative who is not (in any such cases) a member of the household of the person concerned, there is to be a deduction at the rate of such payments or at such rate, not exceeding the rate of such payments, as in all the circumstances is reasonable.

12. Where the person concerned must provide for any other matter the Board may make an allowance of such amount as it considers to be reasonable in the circumstances of the case.

13. In computing the income from any source there is to be disregarded such amount, if any, as the Board considers to be reasonable having regard to the nature of the income or to any other circumstances of the case.

SCHEDULE 2

Regulation 10

ASSESSMENT OF DISPOSABLE CAPITAL FOR THE PURPOSES OF CHILDREN’S LEGAL AID

1.—(1) Subject to these Regulations, there is to be included in the computation of the amount of the capital of the person concerned the amount or value of every resource of a capital nature ascertained as on the date of the application for legal aid.

(2) Where it is brought to the notice of the Board that between the date of the application and the determination—

- (a) there has been a substantial fluctuation in the value of a resource;
- (b) there has been a substantial variation in the nature of a resource affecting the basis of computation of its value;

(7) [S.I. 1987/1967](#).

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- (c) any resource has ceased to exist; or
- (d) a new resource has come into the possession of the person concerned,

the Board is to compute the capital resources of that person in the light of such facts, and the resources as so computed are to be taken into account in the determination.

2. So far as any resource does not consist of money, the amount or value of the resource is to be taken to be—

- (a) the amount which that resource would realise if sold in the open market; or
- (b) if there is only a restricted market for that resource, the amount which it would realise in that market; or
- (c) the amount or value of the resource assessed in such manner as appears to the Board to be just and equitable.

3. Where money is due to the person concerned, whether immediately payable or otherwise and whether the payment the money is secured or not, the value is taken to be the present value of the money.

4. If the person concerned stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the Board may, instead of ascertaining the value of stocks, shares, bonds or debentures in that company, treat the person as if that person were such a sole owner or partner and compute the amount of the person's capital in respect of that resource in accordance with paragraph 5 of this Schedule.

5. Where the person concerned is, or is to be treated as, the sole owner of or a partner in any business, the value of such business or that person's share in the business to that person is taken to be either—

- (a) such sum, or that person's share of such sum, as the case may be, as could be withdrawn from the assets of such business without substantially impairing the profits of such business or the normal development of the business; or
- (b) such sum as that person could borrow on the security of his or her interest in such business without substantially injuring the commercial credit of that business, whichever is the greater.

6. The value of any interest, whether vested or contingent, of the person concerned in the fee of any heritable or moveable property forming the whole or part of any trust or other estate, is to be computed by the Board in such manner as appears to it to be both equitable and practicable.

7. In computing the amount of capital of the person concerned where that person is in receipt of income support under section 124 of the 1992 Act, income-related employment and support allowance or universal credit, there is disregarded any amount which exceeds the sum for the time being specified as the disposable capital limit under section 28K(2)(b)(8) of the Act.

8. In computing the amount of capital of the person concerned, there is wholly disregarded—

- (a) a back to work bonus (payable under the Jobseekers Act 1995)(9);
- (b) any payment made under the Community Care (Direct Payments) Act 1996(10) or under section 12B of the Social Work (Scotland) Act 1968(11);

(8) Section 28K was inserted by section 191 of the 2011 Act.

(9) 1995 c.18.

(10) 1996 c.30.

(11) 1968 c.49.

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- (c) a payment by a local authority in exercise of the powers in section 20 of the Local Government in Scotland Act 2003(12) (power to advance well-being) and using funds provided by the Scottish Ministers from the Scottish Welfare Fund where the payment is—
- (i) a crisis payment made for the purpose of meeting an immediate short term need; or
 - (ii) made for the purpose of meeting a need for community care.

9. Save in exceptional circumstances, nothing is to be included in the amount of capital of the person concerned in respect of—

- (a) the household furniture and effects of the dwelling house occupied by that person;
- (b) articles of personal clothing; and
- (c) the personal tools and equipment of that person's trade, not being part of the plant or equipment of a business to which the provisions of paragraph 5 of this Schedule apply.

10.—(1) In computing the amount of capital of the person concerned, the value of any interest in the main or only dwelling in which that person resides is to be wholly disregarded.

(2) Where the person concerned resides in more than one dwelling in which that person has an interest, the Board is to decide which is the main dwelling and is to take into account, in respect of the value to that person of any interest in a dwelling which is not the main dwelling, any sum which might be obtained by borrowing money on the security of that dwelling.

11. Where the person concerned has received or is entitled to receive from a body of which that person is a member a sum of money by way of financial assistance towards the cost of the proceedings in respect of which legal aid is applied for, such sum is disregarded.

12. The value of any life assurance or endowment policy is taken to be the amount which the person concerned could readily borrow on the security of that life assurance or endowment policy.

13. Where under any statute, bond, agreement, indemnity, guarantee or other instrument the person concerned is under a contingent liability to pay any sum or is liable to pay a sum not yet ascertained, an allowance is to be made of such an amount as is reasonably likely to become payable within the 12 months immediately following the date of application for children's legal aid.

14. An allowance may be made in respect of any debt owed by the person concerned (other than a debt secured on the dwelling or dwellings in which that person resides) to the extent to which the Board considers reasonable, provided that the person concerned produces evidence to the Board's satisfaction that the debt or part of the debt will be discharged within the twelve months immediately following the date of the application.

15.—(1) Where the person concerned is of pensionable age and his or her annual disposable income (excluding any net income derived from capital) is less than the figure prescribed in section 28K(2)(a) of the Act there is disregarded the amount of capital as specified in the following table—

<i>Annual disposable income (excluding net income derived from capital)</i>	<i>Amount of capital disregarded</i>
Up to £350	£35,000
£351–£800	£30,000
£801–£1,200	£25,000
£1,201–£1,600	£20,000

(12) 2003 asp 1.

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<i>Annual disposable income (excluding net income derived from capital)</i>	<i>Amount of capital disregarded</i>
£1,601–£2,050	£15,000
£2,051–£2,450	£10,000
£2,451 and above	£5,000

(2) In this Schedule “pensionable age” means the age of 60.

16. In computing the amount of capital there is disregarded such an amount of capital, if any, as the Board in the circumstances of the case may in its discretion decide.